

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF NEW YORK**

LEIGHTON TECHNOLOGIES LLC, Plaintiff, v. OBERTHUR CARD SYSTEMS, S.A., Defendant.)) Case No. 04-cv-02496) (CM)(LMS))) PLAINTIFF LEIGHTON) TECHNOLOGIES LLC'S) MEMORANDUM IN SUPPORT OF ITS) MOTION FOR LEAVE TO FILE) A FIRST AMENDED COMPLAINT))
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Pursuant to Rule 15 of the Federal Rules of Civil Procedure, Leighton Technologies LLC (“Leighton”) seeks to file a First Amended Complaint to assert infringement of the patents at issue against Oberthur Card Systems Corporation and Oberthur Card Systems, Inc. and to add allegations of contributory infringement.¹ According to Defendant Oberthur Card Systems, S.A.’s (“Oberthur”) website, both proposed new defendants are subsidiaries of Oberthur that are involved in the manufacture of smart cards. (*See* “Organization Chart” and “Our US Locations” web pages from Oberthur’s website attached hereto as “Exhibit A”). Based upon the recent discovery that has occurred, Leighton has confirmed that Oberthur Card Systems Corporation and Oberthur Card Systems, Inc. also infringe the patents at issue. Each of these parties previously testified at depositions in this matter in the limited discovery that took place prior to the *Markman* Hearing, and recently produced documents on August 22, 2005 through Oberthur. The Scheduling Order provides that new parties and claims may be added until November 28, 2005, and thereafter by a showing of good cause.

¹ A copy of the proposed First Amended Complaint is attached as Exhibit 1 to Leighton’s Motion.

Because permission to amend the pleadings under Rule 15(a) of the Federal Rules of Civil Procedure is to be “freely given” and because there are no compelling reasons to refuse permission to amend (such as undue delay, bad faith, undue prejudice, or futility of amendment), Leighton’s Motion for Leave to File a First Amended Complaint should be granted.

II. ARGUMENT

Rule 15(a) of the Federal Rules of Civil Procedure provides that a party may amend its pleadings by “leave of the court,” and that leave to amend “shall be freely given when justice so requires.” Fed. R. Civ. P. 15 (a); *see also Foman v. Davis*, 371 U.S. 178, 182 (1962) (“this mandate is to be heeded”). Rule 15(a) embodies a liberal pleading policy of the federal rules. *Tucker v. Union of Needletrades, Industrial and Textile Employees*, 407 F.3d 784, 788 (6th Cir. 2005) (Rule 15 provide for liberal amendment if a party advances a new claim based on discovery); *see also Friedl v. City of New York*, 210 F.3d 79, 88 (2d Cir. 2000) (allowing amendment proposed after discovery revealed additional facts). While a trial court has the discretion to grant or deny leave to amend, leave to amend should be freely granted, as the Rule requires, unless there is sufficient reason to deny leave. *Foman*, 371 U.S. at 182; *Hemphill v. Scott*, 141 F.3d 412, 420 (2d Cir. 1998). Sufficient reasons to deny the motion would include undue delay, bad faith or dilatory motive by the movant, undue prejudice to the opposing party, failure to cure deficiencies in former amendments, and futility of amendment. *Foman*, 371 U.S. at 182; *Hemphill*, 141 F.3d at 420.

Based upon the recently produced documents, Leighton alleges that Oberthur Card Systems Corporation and Oberthur Card Systems, Inc. are involved in the infringing activities and that Oberthur and/or the U.S. Affiliates contributorily infringes the patents at issue. The interests of justice require that Leighton be given the opportunity to pursue its claims against

these additional parties, as well as against the current Oberthur defendant. There has been no undue delay, bad faith or dilatory motive by the movant, and there is no undue prejudice to the opposing party.

III. CONCLUSION

For the reasons above, and in view of the liberal amendment policy of Rule 15(a) of the Federal Rules of Civil Procedure, Leighton respectfully requests that the Court grant its Motion for Leave to File a First Amended Complaint.

Dated: September 22, 2005

SUTHERLAND ASBILL & BRENNAN LLP

/s/ Robert A. Gutkin

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Exhibit A

